IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WP(C).No. 32353 of 2006(B)

PETITIONER:

JOSE MANI,
KURUVITHADOM HOUSE, PERUMBALLOORE,
MUVATTUPUZHA.

BY ADV. SRI.K.N.CHANDRABABU

RESPONDENTS:

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1. THE DEPUTY REGISTRAR/SPL.ARBITRATOR,
DIST.CO-OPERATIVE BANK, ERNAKULAM.

2. JAIBY JOSE,
KURUVITHADOM HOUSE, PERUMBALLORE,
MUVATTUPUZHA.

3. K.J.MATHEW,
KAKKANATTU HOUSE, PERUMBALLORE,
MUVATTUPUZHA.

4. MATHEW MATHEW,
PITTAPPILLIL HOUSE, PERUMBALLOR,
MUVATTUPUZHA.

5. THE BRANCH MANGER,
ERNAKULAM DIST.CO-OPERATIVE BANK,
MAUVATTUPUZHA, RURAL BRANCH.

6. THE KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM.

7. THE JOINT REGISTRAR,
O/O.THE JOINT REGISTRAR OF DISTRICT
CO-OPERATIVE SOCIETY, ERNAKULAM.

8. THE BOARD OF DIRECTORS OF DISTRICT
CO-OPERATIVE BANK, ERNAKULAM, REP.BY ITS
PRESIDENT.

BY SENIOR GOVERNMENT PLEADER, SRI.P.N.SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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W.P.(C) No. 32353 of 2006 (B)

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Dated this the 6th day of December, 2006

J U D G M E N T

The writ petitioner is one of the guarantors for the loan availed by the principal debtor, who is none other than the son of the writ petitioner. When the principal debtor defaulted the payment, the arbitration proceedings were initiated against the principal debtor and the guarantors. An award was passed on 23/05/2005 for an amount of Rs.4,04,178/-. Neither there was any challenge nor any payment made by the writ petitioner or his son or any other guarantors. The property of the writ petitioner was pledged with the bank, at the time of availing the loan. Therefore, the fifth respondent bank proceeded against the writ petitioner for sale of his property and to realise the amount. This writ petition is filed challenging Exhibit P2 auction sale notice, dated 18/10/2006 for an amount of Rs.8,10,406/-.

2. I have heard the elaborate arguments of the learned counsel appearing for the writ petitioner, the learned counsel for the fifth respondent Ernakulam District Co-operative

Bank, Muvattupuzha Rural Branch and the learned Senior Government Pleader.

3. Exhibit P6 is a representation dated 04/12/2006, preferred by the writ petitioner before the fifth respondent bank, requesting that he may be given the facility of one time settlement scheme for the repayment of the entire amount due to the bank. The counsel for the fifth respondent, however, submits that the bank is not in receipt of the same. The counsel for the writ petitioner showed the receipt for having sent the representation through courier service.

4. In the above facts situation, without entering into any discussions on the merits of the matter or expressing any opinion on the contentions raised by either side, I direct the writ petitioner to approach the fifth respondent bank, who shall consider Exhibit P6, if it is received by it. On the other hand, if Exhibit P6 is not in its possession, the writ petitioner shall file a representation requesting for one time settlement, under the existing scheme, within ten days from today. On receipt of the said representation, the fifth respondent shall hear the writ petitioner, fix the amount due, applying the directions contained

in Circular No.27/2006, dated 29/06/2006 and finally dispose of such representation, within three weeks from the date of receipt of the said representation.

5. The sale proceedings initiated against the property of the writ petitioner shall be kept in abeyance till the payment is made, as per the direction of the fifth respondent on the representation filed by the writ petitioner for the one time settlement scheme arrangement. In case of any default in the payment, as per the direction that would be passed by the fifth respondent on the representation for one time settlement scheme under Circular No.27/2006, the bank will be at liberty to proceed, as per the stipulations contained therein.

6. On the petitioner availing the one time settlement scheme under Circular No.27/2006, the revision petition, preferred before the Co-operative Appellate Tribunal, Thiruvananthapuram, shall be treated as closed.

(J.M.JAMES)
Judge

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